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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In The Matter of	)	
Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, Interlata Services in Texas	)	CC Docket No. 00-4

OPPOSITION OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

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SUMMARY

The Telecommunications Resellers Association ("TRA"), a national trade association representing more than 800 entities engaged in, or providing products and services in support of, telecommunications resale, hereby respectfully urges the Commission to deny the Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively "Southwestern Bell") for authority to provide interLATA service "originating" within the Southwestern Bell "in-region State" of Texas. As TRA will demonstrate herein, Southwestern Bell has not satisfied "the ultimate burden of proof that its application satisfies all of the requirements of section 271." Consideration of "the overall picture presented by the record" reveals that the applicant is not "provid[ing] access to competing carriers in 'substantially the same time and manner' as it is provid[ing] to itself." And while the Public Utility Commission of the State of Texas ("Texas PUC") has undertaken a yeoman-like effort in evaluating Southwestern Bell's "checklist compliance," its analysis, as well as its ultimate conclusions, fall short in critical respects. Accordingly, because Southwestern Bell has not "take[n] the steps required to open its local markets to full competition," it should not "be rewarded with section 271 authority to enter the long distance market."

TRA's carrier members have been, and if provided a fair opportunity to do so, will continue to be, active participants in the Texas local telephone market, serving residential, as well as small business, users. Critical to their ability to do so, however, is full checklist compliance by Southwestern Bell, including, among other things, fully viable operations support systems ("OSS") for both resale and UNE-based operations, adequate to allow TRA's resale carrier members to

provide service at parity with Southwestern Bell. Also critical to the continued participation by TRA's carrier members in the local service market, particularly the smaller TRA members that continue to rely on resale, is full and fair access under Section 251(c)(4) to all retail offerings of Southwestern Bell, and thus to all consumers.

While Southwestern Bell has admittedly made measurable strides in opening its Texas local markets to competition, it has not achieved full checklist compliance. Of particular importance to TRA's carrier members, Southwestern Bell still does not provide access to OSS functions which is equivalent in terms of quality, accuracy and timeliness to that which it provides itself, its customers and its affiliates. Moreover, Southwestern Bell continues to deny TRA's resale carrier members access at wholesale rates to all of its retail service offerings.

The data presented by Southwestern Bell in support of its Application confirms TRA's assessment. Thus, TRA submits that Southwestern Bell's performance reports for the months of July through November document the carrier's failure to afford competitive providers non-discriminatory access to its OSS functions. Likewise, its rosy conclusions notwithstanding, Telcordia's Final Report actually underscores significant deficiencies in Southwestern Bell's OSS capabilities. As the Commission has recognized, a BOC's failure to satisfy even "an individual item of the competitive checklist constitutes independent grounds for denying . . . [an] application," and Southwestern Bell's OSS performance implicates "checklist items 2 and 14, as well as other checklist terms."

Southwestern Bell's Application also must be rejected because the carrier does not make retail xDSL-based advanced services available at wholesale rates to TRA's resale carrier members for resale, purportedly avoiding this obligation by providing these services exclusively through a wholly-owned subsidiary. While the Commission has admittedly sanctioned this action, it nonetheless constitutes a blatant violation of Section 251(c)(4) of the Communications Act which, until cured, stands as an insurmountable barrier to the lawful grant of Southwestern Bell's Application.

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In The Matter of	)	
Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, Interlata Services in Texas	)	**CC Docket No. 00-4**

OPPOSITION OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel and pursuant to Public Notice, DA 00-37 (released January 10, 2000), hereby opposes the application ("Application") filed by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively "Southwestern Bell") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),[2] as amended by Section 151 of the Telecommunications Act of 1996 ("Telecommunications Act"),[3] for authority to provide interLATA service "originating" within the

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[1] A national trade association, TRA represents more than 800 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services.

[2] 47 U.S.C. § 271(d).

[3] Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

Southwestern Bell "in-region State" of Texas. As TRA will demonstrate herein, Southwestern Bell has not satisfied "the ultimate burden of proof that its application satisfies all of the requirements of section 271."[4] Consideration of "the overall picture presented by the record" reveals that the applicant is not "provid[ing] access to competing carriers in 'substantially the same time and manner' as it is provid[ing] to itself."[5] And while the Public Utility Commission of the State of Texas ("Texas PUC") has undertaken a yeoman-like effort in evaluating Southwestern Bell's "checklist compliance," its analysis, as well as its ultimate conclusions, fall short in critical respects. Accordingly, because Southwestern Bell has not "take[n] the steps required to open its local markets to full competition," it should not "be rewarded with section 271 authority to enter the long distance market."[6]

I.

INTRODUCTION

TRA is the largest association of competitive carriers in the United States, numbering among its more than 800 members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well. Over 45 percent of TRA's carrier members currently provide local service as part of their

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4 Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), CC Docket No. 99-295, FCC 99-404, ¶ 44 (released December 22, 1999) ("Bell Atlantic New York Section 271 Order")..

5 Id. at ¶¶ 5, 44.

6 Id. at ¶ 15.

product and service portfolios, while another 12 percent and 8 percent anticipate entry into the local market within the next 6 and 12 months, respectively.[7] By 1998, TRA's carrier members were already providing local exchange service in 46 of the 50 States, with Texas having one of the highest concentrations of TRA carrier members active in the local market. Moreover, TRA's local carrier members collectively utilize the network services of every major incumbent local exchange carrier ("LEC"), including Southwestern Bell.[8]

TRA's local carrier members serve primarily small business and residential customers, with the latter market segment representing more than 20 percent of total customers.[9] While nearly 40 percent of TRA's local carrier members utilize unbundled network elements ("UNEs") to serve at least some of their local customers, the remainder continue to rely exclusively on full service resale.[10] As a result, in excess of 60 percent of TRA's local carrier members currently report net margins of 0 percent or less on their local service operations.[11] As TRA demonstrated in a study submitted to the Commission in CC Docket No. 96-98, local resale is not a viable long term

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7 Telecommunications Resellers Association,"1999 Reseller Membership Survey and Statistics" at 1, 13 ("TRA 1999 Membership Survey").

8 Telecommunications Resellers Association, "Member Survey of Local Competition," p. 2 (April, 1998) ("TRA Local Competition Survey"); Remarks by the Telecommunications Resellers Association on the Implementation of the Telecommunications Act of 1996, p. A-2, submitted to the House Committee on Commerce on December 1, 1998 ("TRA Congressional Report").

9 TRA Congressional Report at A-4.

10 Id. at A-1.

11 Id. at A-8.

business strategy;[12] rather, as the Commission has recognized,[13] resale is a market entry vehicle, particularly for smaller carriers, for which combinations of UNEs must be substituted to allow for profitable operation. Thus, for example, TRA showed that in the State of Texas, using evenly-applied business assumptions over a five year period, a carrier using resale would exhibit a negative EBIDTA in the range of 10.6 percent, while the same carrier making use of the UNE platform would achieve a positive EBIDTA in excess of 37 percent.[14] TRA also demonstrated that a wholesale discount in excess of 34 percent would be required in Texas to allow a stand-alone local resale operation simply to break even.[15]

In short, TRA's carrier members have been, and if provided a fair opportunity to do so, will continue to be, active participants in the Texas local telephone market, serving residential, as well as small business, users. Critical to their ability to do so, however, is full checklist compliance by Southwestern Bell, including, among other things, fully viable operations support systems ("OSS") for both resale and UNE-based operations, adequate to allow TRA's resale carrier members to provide service at parity with Southwestern Bell. Also critical to the continued participation by TRA's carrier members in the local service market, particularly the smaller TRA

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[12] Letter to Jake E. Jennings from David Gusky, Executive Vice President of the Telecommunications Association, submitted in CC Docket No. 96-98 on September 8, 1999 ("Gusky Letter").

[13] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 12 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, 12 FCC Rec. 12460 (1997), *aff'd/vacated in part sub. nom.* Iowa Util. Bd v. FCC, 120 F.3d 753 (1997), *writ of mandamus issued* 135 F.3d 535 (8th Cir. 1998), *aff'd/vacated in part sub. nom.* AT&T Corp., et al. v. Iowa Utilities Board, 119 S.Ct. 721 (1999).

[14] Gusky Letter at Appendix A.

[15] Id. at Appendix B.

members that continue to rely on resale, is full and fair access under Section 251(c)(4) to all retail offerings of Southwestern Bell, and thus to all consumers.

While Southwestern Bell has admittedly made measurable strides in opening its Texas local markets to competition, it has not achieved full checklist compliance. Of particular importance to TRA's carrier members, Southwestern Bell still does not provide access to OSS functions which is equivalent in terms of quality, accuracy and timeliness to that which it provides itself, its customers and its affiliates. Moreover, Southwestern Bell continues to deny TRA's resale carrier members access at wholesale rates to all of its retail service offerings.

Premature grant of in-region, interLATA authority would jeopardize all that has thus far been achieved in the Texas local markets. As the Commission has recognized, "Section 271 . . . creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets."[16] "[I]ncumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act,* to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services."[17] As couched by Chairman Kennard:

> If a Bell Company can offer long distance service before it has opened its local market to competition as set forth in Section 271, then the Bell Company will continue to dominate the local service

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[16] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543, ¶ 14 (1997).

[17] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 55 (emphasis added).

> market, and also could dominate the market for bundled services. That will harm competition and harm consumers, because consumers will continue to be denied a choice of providers for local service.
>
> Permitting Bell Company entry into the interLATA interexchange market before the local market has been opened to competition is also likely to result in more mega mergers and consolidation rather than competition. If the local market is not open, long distance companies will have no alternative but to merge with a local service provider in order to respond to consumer demand for "one-stop shopping." And that's why under the Act, Congress wisely required the Bell Companies to open their local markets to competition before they may be authorized to provide long distance services.
>
> Thus, we must focus on the most fundamental goals of the Act, each integral to the other: opening all markets, especially local telecommunications markets, ensuring free consumer choice of every kind, and lowering all barriers to entry in the name of competition. Once these goals are fully realized through the mechanisms of the Act, the deregulation of telephone markets in favor of market forces is possible and desirable. This is the vision of Congress and the end to which every action of the FCC is and shall be directed.[18]

Thus, whatever market-opening thresholds have not been reached when in-region, interLATA authority is granted likely will not be achieved once the incentives built into Section 271 no longer exist. As the Commission has recognized, "[p]remature entry would reduce the BOCs' incentives to open their local markets, . . . with the obvious result . . . [being] less local competition . . . [and] [t]he perhaps less obvious, but equally serious, result . . . [being] less long distance competition."[19]

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[18] Statement of William E. Kennard, Chairman, Federal Communications Commission, on Section 271 of the Telecommunications Act of 1996 before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation of the United States Senate on March 25, 1998.

[19] AT&T Corporation, *et al.*, v. Ameritech Corporation, 13 FCC Rcd. 21438, ¶ 7 (1998).

It is undoubtedly for this reason that Congress precluded approval of BOC applications for in-region, interLATA authority unless and until the Commission finds, among other things, that "the petitioning Bell operating company has . . . fully implemented the competitive checklist in subsection (c)(2)(B)."[20] As the Commission has correctly concluded, a BOC's failure to satisfy even "an individual item of the competitive checklist constitutes independent grounds for denying . . . [an] application."[21] Moreover, Congress identified as an additional prerequisite for grant of a BOC application for in-region, interLATA authority a Commission determination that "the requested authorization is consistent with the public interest, convenience and necessity."[22] As the Commission has recognized, this latter criterion is "a separate, independent requirement for entry," which necessitates a careful examination of "a number of factors, including the nature and extent of competition in the applicant's local market, in order to determine whether that market is and will remain open to competition."[23]

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[20] 47 U.S.C. 271(d)(3)(A)(i).

[21] Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 20599, ¶ 50 (1998).

[22] 47 U.S.C. 271(d)(3)(B), (C).

[23] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543 at ¶ 402.

II.

ARGUMENT

A. Southwestern Bell's Failure to Meet Key Performance Measures Requires Rejection of Its Application

According to Southwestern Bell, it's "current and future provisioning of local facilities and services in Texas are subject to the most comprehensive performance reporting program in the industry."[24] As described by Southwestern Bell, the performance reports it must file monthly with the Texas PUC "address pre-ordering, ordering, provisioning, maintenance and repair, and billing of UNEs and resold services; interconnection and collocation; directory assistance and operator services; 911 services; interim and long-term number portability; directory assistance database; access to poles, ducts, conduits, and rights of way; loading and testing of NXX codes; and fulfillment of Special Requests for new UNEs or interconnection arrangements."[25] "SWBT's performance measurements compare service on behalf of CLECs directly to the level of service in SWBT's retail operations," unless there is no comparable retail function, in which case, "the level of service provided to CLECs is tested against benchmarks that were approved by the Texas PUC in its collaborative process."[26] Measures are classified as "Tier 1" or "Tier 2," depending on whether

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24 Brief in Support of Application by Southwestern Bell for Provision of In-region, InterLATA Services in Texas, filed in CC Docket No. 00-04 on January 10, 2000 at 13 ("Southwestern Bell Brief in Support").

25 Id. at 14.

26 Id. at 15.

they affect end users (the former) or local competition (the latter).[27] Differences in performance are evaluated utilizing a "statistical . . . z-test" developed by Southwestern Bell.[28]

Southwestern Bell does not "claim perfection in its provision of facilities and services for Texas CLECs," but asserts that "in each of the last three months for which validated data are available (August through October), SWBT met the Texas PUC's parity or benchmark standard for approximately 92 percent of submeasures for which there were sufficient monthly data to make an assessment."[29] And this, opines Southwestern Bell is good enough. Indeed, according to Southwestern Bell, "[f]or each of the functions covered by these performance measures, the Texas PUC-backed performance results should . . . end the Commission's inquiry."[30] TRA disagrees.

An analysis of Southwestern Bell' performance reports for July through November presents a very different picture than that painted by Southwestern Bell -- one in which the parity demanded by Section 271 has yet to be achieved. For example, under Performance Measurement ("PM") 2 – *i.e.*, "% Responses Received within 'X' Seconds - OSS interfaces" – Southwestern Bell failed at least three separate tests -- Address Verification (Verigate), Telephone Number (Verigate) and Service Availability (Verigate) – in two to five of the months, with failures in two of these test

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27 Id. at 16.

28 Id. at 15.

29 Id. at 17 - 18

30 Id. at 18.

categories continuing into October and/or November.[31] Likewise, with respect to PM5 – "% of Firm Order Confirmations Received within 'X' Hours – Southwestern Bell failed at least four tests – UNE Loop 1-50 - Mechanized (EDI), UNE Loop 1-200 - Manual, UNE Loop 1-50 - Manual, and Switch Port - Manual – in two to five of the months, with failures in all of these test categories continuing into October and/or November.[32] And for PM58 – "% SWB Caused Missed Due Dates" – Southwestern Bell failed at least five tests in one or more regions – 8.0 dB Loop NFW - UNEs, BRI Loop - UNEs. DS1 Loop with Test Access - UNEs, and DSL – in two to five of the months, with wide margin failures in all of these test categories continuing into October and/or November.

Failures to meet performance measures were recorded by Southwestern Bell in at least one category and one region for two or more months and/or the month of November with respect to the following OSS functionalities:

No.	Performance Measure	Category	Region
Pre-Ordering/Ordering			
1	Average Response Time for OSS Pre-Order Interfaces	Service Availability (Verigate)	Company
7.1	% Mechanized Completions Returned Within 1 Day of Work Completion[33]		Company

[31] But for the Southwestern Bell developed "z-test," the applicant would also have failed an additional test in at least two months - PIC (Database). These deficiencies are chronic; The carrier achieved the address verification and service availability benchmarks in two or fewer months during all of 1999.

[32] But for application of the Southwestern Bell developed "z-test," the applicant would also have failed under an additional category in at least two months -- *i.e.*, UNE Loop 1-50 (Lex).

[33] Southwestern Bell has yet to achieve compliance with this standard, and such failure continues to be by a very substantial margin. For example, November data shows a performance rate of 84.8 percent versus a benchmark of 97 percent.

No.	Performance Measure	Category	Region
10.1	% Manual Rejects Received Electronically and Returned in 5 Hours[34]		Company
13	Order Process % Flow Through[35]		Company
Billing			
17	Billing Completeness[36]		Company
POTS - Maintenance			
38	% Missed Repair Commitment	Dispatch - UNE Loop and Port Combos	DFW, ST
41	% Repeat Reports	UNE Loop and Port Combos	DFW, HS, ST
Specials - Provisioning			
43	Average Installation Interval	DSL ISDN	CW, DFW CW
45	% SWB Caused Missed Due Dates > 30 Days[37]	DSL ISDN-BRI	CW CW

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[34] Southwestern Bell has yet to achieve compliance with this standard, and such failure continues to be by a very substantial margin. For example, November data shows a performance rate of 65.1 percent versus a benchmark of 97 percent.

[35] Southwestern Bell has yet to achieve compliance with this standard. While discrepancies between retail and wholesale performance are not large, the extent of the difference is understated by the exclusion from this performance measurement of those orders which are not expected to flow through to Service Order Retrieval and Distribution ("SORD"), which removes the impact of manual processing.

[36] Southwestern Bell has failed to achieve compliance with this standard in 11 out of the last 12 months.

[37] The differentials remain very substantial with regard to this performance measurement.

No.	Performance Measure	Category	Region
47	% SWB Missed Due Dates due to Lack of Facilities[38]	DSL ISDN-BRI	CW CW
49	Average Delay Days for SWB Caused Missed Due Dates[39]	ISDN-BRI	CW
50	% SWB Caused Missed Due Dates > 30 Days	ISDN-BRI	CW
Specials - Maintenance			
53	% Repeat Reports[40]	ISDN-BRI	CW
UNE - Provisioning			
55	Average Installation Interval DSL (Requires Conditioning)[41]		DFW
56	% Installations in "X" Days	BRI Loop 8.0 dB Loop 1-10 UNEs BRI Loops 1-10	CW DFW DFW
59	% Trouble Report within 30 Days of Install[42]	5.0 dB Loop - UNEs BRI Loop - UNEs	CW CW
60	% Missed Due Dates Due to Lack of Facilities[43]	BRI Loop DSL	CW CW

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38 The differentials remain very substantial with regard to this performance measurement.

39 The differentials remain very substantial with regard to this performance measurement.

40 The differentials remain very substantial with regard to this performance measurement.

41 The differentials remain very substantial with regard to this performance measurement.

42 The differentials remain very substantial with regard to this performance measurement.

43 The differentials remain very substantial with regard to this performance measurement.

No.	Performance Measure	Category	Region
UNE - Maintenance			
65	Trouble Report Rate	5.0 dB Loop with Test Access - UNEs	DFW, CW
		BRI Loop with Test Access - UNE	CW
Interconnection Trunks			
70	Percent Trunk Blockage	SWBT End Office to CLEC	HS
71	Common Transport Trunk Blockage		ST
75	% SWB Caused Missed Due Dates > 30 Days		CW
78	Average Interconnection Trunk Installation Interval	Interconnection Trunks	DFW, HS, ST
Local Number Portability (LNP)			
94	% FOCs Received within "X" Hours	Res/Bus LNP Only 1-19 (Lex)	Company
		Res/Bus Loop 1-19 (Lex)	Company
Coordinated Conversions			
116	% Missed Mechanized INP Conversions	Overall	CW

Of the 29 performance measures listed above, Southwestern Bell failed to fully meet more than 70 percent in at least three of the five identified months, all but six in the months of either October or November, and roughly two thirds in the month of November.[44] This, of course, means

[44] Particularly troubling are the performance measures as to which Southwestern Bell's compliance appears to have deteriorated, in whole or in part, during the Fall – *i.e.*, PM5, 7, 17, 47, 53, 55, 56, 58, 60, 65, and 75.

that these failures have not been addressed, and are not being addressed, by Southwestern Bell. Moreover, the extent of Southwestern Bell's failures are masked by the exclusion of any measurement for which a threshold number of competitive LEC observations were not available, including a majority of the Tier 2 measurements.[45]

What do the listed failures indicate with respect to the service Southwestern Bell is providing competitive LECs? Certainly, problems persist with respect to loop and number portability cutovers, with order rejection rates running at unacceptable levels and dial tone being lost for a significant percentage of customers. Reliance on manual processing remains excessive and access to electronic maintenance and repair systems remains inadequate. Capacity issues are evident and questions remain with respect to Southwestern Bell's compliance with its change management program. And, problems abound in the advanced services arena.

Telcordia Technologies, Inc. declares that performance measures "define standards set by the TPUC that SWBT needs to meet in order to comply with Section 271of the Telecommunications Act of 1996."[46] And while the Commission has indicated that it will "consider the overall picture presented by the record, rather than focusing on any one aspect of performance," it has also "consistently . . . found that nondiscriminatory access to OSS is a prerequisite to the

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45 It is noteworthy that Southwestern Bell failed to achieve a 90 percent passage rate for even the limited number of Tier 2 measurements reported in any of the months of June through November. Among the unimplemented performance measures are the large majority of LNP-related measures and such other critical measures as "Average Response Time for Loop Make-up Information" and "NXX Mean Time to Repair." Three "high" Tier 1 and three "high" Tier 2 measures are among the unimplemented measures, as are one "medium" Tier 1 and three "medium" Tier 2 measures.

46 Telcordia Technologies, Inc., Public Utility Commission of Texas Southwestern Bell OSS Readiness Report, p. 145 (September 1999) ("Telcordia Final Report").

development of meaningful local competition."[47] Moreover, the Commission has recognized that "without access to the BOC's OSS, a competing carrier 'will be severely disadvantaged, if not precluded altogether, from fairly competing' in the local exchange market."[48] Hence, a BOC cannot be afforded in-region, interLATA authority until it establishes that it "provides requesting carriers nondiscriminatory access to OSS functionality." As noted above, a BOC's failure to satisfy even "an individual item of the competitive checklist constitutes independent grounds for denying . . . [an] application,"[49] and Southwestern Bell's OSS performance implicates "checklist items 2 and 14, as well as other checklist terms."[50]

B. The Telcordia Final Report Belies, Rather Than Supports, The Conclusion That Southwestern Bell Provides Nondiscriminatory Access To Operationally Ready OSS

In its Final Report, Telcordia declares that "SWBT's OSSs are operationally ready to support commercial volumes of CLEC orders, based upon IQ2000 CLEC forecasts." Moreover, Telcordia opines that "SWBT can provide CLECs non-discriminatory access to its OSSs."[51]

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47 Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), CC Docket No. 99-295, FCC 99-404 at ¶¶ 5, 84.

48 Id. at ¶ 83.

49 Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 20599, ¶ 50 (1998).

50 Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), CC Docket No. 99-295, FCC 99-404 at ¶ 84.

51 Telcordia Final Report at 11.

Telcordia's rosy conclusions notwithstanding, its Final Report actually underscores significant deficiencies in Southwestern Bell's OSS capabilities.[52]

Initially, Telcordia identifies nearly 40 "unclosed issues" which it acknowledges must be "resolved" before Southwestern Bell's OSS can be deemed to be "operationally ready to support commercial volumes of CLEC orders" and before Southwestern Bell will be in a position to "provide CLECs non-discriminatory access to its OSS."[53] These "unclosed issues" extend across a variety of OSS functionalities, many of which impact directly the availability of UNE loops and the UNE platform. These open matters also implicate such fundamental matters as interaction with competitive LECs[54] (or the lack thereof)[55] and training of Southwestern Bell personnel.[56] And closure of these issues is only one of seven actions Telcordia cites as necessary before Southwestern

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52 Id.

53 Id. at 10.

54 Among other things, Telcordia asserts that Southwestern Bell must clarify its documentation for loop ordering and number portability, as well as increase the clarity of its error messages for UNE platform and loop orders. Id. at 10 - 12. As described by Telcordia, this lack of clarity "is leading to unnecessary supplemental steps in the ordering process with concomitant additional processing that can engender unnecessary costs and delays." Id. at 12. Examples of the problems to which Telcordia is referring are set forth in Attachment A to its Final Report at A-46 - 51.

55 Telcordia notes a number of responsiveness problems which hinder competitive LEC operations. For example, Telcordia cites as an open issue Southwestern Bell's failure to "resolve issues through its IS Help Desk in a timely manner." Id. at 10, Attachment A at A-110 - A-111. Responsiveness deficiencies also appeared in Southwestern Bell's dealings with troubles arising out of UNE loop and UNE platform ordering processes. Id. at Attachment A at A-55 - A-57.

56 A lack of familiarity by Southwestern Bell personnel with "the standard methods and procedures specified in the CLEC Handbook, Accessible Letters, and the Local Service Order Requirements (LSOR) documents" contributes to the "unnecessary costs and delays" referenced by Telcordia above. Id. at 10 - 12, Attachment A at A- 51 - 52, A-104 - 106..

Bell can be said to satisfy the competitive checklist. While Telcordia opines that"[t]hese issues are well on their way towards resolution," such optimism cannot substitute for actual resolution.[57]

Telcordia also "closed" a number of other issues whose resolution appears doubtful. Telcordia closed some issues simply because they did not recur in a retest following the test in which they initially occurred.[58] Little faith can be placed in judgments based on such limited "snapshots," particularly if the problems underlying the initial failure are not addressed. Telcordia's closure of Issue No. UL-RT-15 illustrates this point. Telcordia, having queried why the orders in questions were not timely provisioned, suggests only that "[t]here are a myriad of reasons why circuits are provisioned late or incorrectly ranging from inexperienced staff to heavy work volumes in the Central Office," before advising that it "verified all of the[] orders, which ha[d] been provisioned late or incorrectly during the Retest Phase."[59] Closures of other issues by Telcordia are undocumented and unexplained, leaving unstated what, if any, actions were taken by Southwestern Bell to address the noted deficiencies. For example, Telcordia appears to have closed Issue No. UL-RT-13 because "it does not impact the functionality of the orders," even though it "can impact the timeliness of how orders are processed and provisioned."[60] Other issues are closed without explanation. Thus, with respect to Issue No. UL-RT-16, Telcordia, having noted that "[t]wo orders did not receive SOCs

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[57] Id.

[58] Reliance upon retesting of individual items presents its own problems. Such an approach can mask systemic problems because it fails to evaluate the system as a whole. The component parts of any complex system interrelate in myriad ways. Changes to one component can have significant, and unforeseen, impacts on other components. Hence, a formal end-to-end test is necessary to ensure that the system, rather than merely the individual systems components, perform as required.

[59] Id. at Attachment A at A-59 - A-60.

[60] Id. at Attachment A at A-55 - A-57.

during the retest period," indicates that no action was taken because "[t]he retest period ended before SOCs were received."[61]

Other fatal flaws in Southwestern Bell's OSS capabilities are laced throughout Telcordia's Final Report and the various attachments thereto. For example, Telcordia acknowledges that Southwestern Bell handles orders from competitive LECs in a manner different from that in which it handles its own orders.[62] Thus, Telcordia notes that only competitive LECs are required to use local service requests ("LSRs"), but downplays Southwestern Bell's heavy reliance upon manual processes to fill competitive LEC LSRs.[63] Even assuming as Telcordia declares that "[m]any of the manual activities use to process CLEC queries and orders also affect SWBT's retail operations," it is the competitive LEC alone that must experience the manual conversion of an LSR to a "service order," ensuring that only competitive LECs are subject to the processing errors associated with this particular manual processing. And while Telcordia opines that "[p]otential problems involving processing of CLEC LSRs are mitigated by implementation by SWBT of its LASR GUI,"[64] it nonetheless recommends in its "next steps" "that all parties to the ordering process increase their familiarity and use of standardized procedures to minimize the need for manual

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61 Id. at Attachment A at A-60 - A-61.

62 Id. at 9.

63 Id. at 9, 22.

64 Notable in this respect, Telcordia's retest of LSR processing for the UNE platform produced not only a higher percentage of errors generally, but a substantially higher percentage of errors attributable to Southwestern Bell. Id. at 12. The retest, moreover, was conducted after Southwestern Bell had introduced its LASR GUI.

processes and thereby minimize differences in the overall results," conceding in so doing the existence of current disparities.

Another illustration is Telcordia's confirmation of Southwestern Bell's persistent inability to seamlessly provision UNE loops or to complete loop cutovers, including number portability cutovers. Thus Telcordia declares that:

> Issues surrounding Coordination at the LOC during loop cutover were raised with SWBT. The issues are manual in nature and speak to SWBT policies regarding SWBT missed commitments and their impact on subsequent CLEC cutovers scheduled on a particular due date. The issue does not impede the functionality of the orders, but it can impact the timeliness of how orders are processed and provisioned. . . . While Telcordia understands the cause of the late SOCs and missed due dates, this issue requires further investigation and remains open until the full extent of the impact can be determined.[65]

Elsewhere, Telcordia, among other things, notes instances of lost dialtone,[66] creation of erroneous orders,[67] failure to provide critical information on firm order confirmations ("FOCs"),[68] failure to respond to inquiries in a timely manner,[69] and deficiencies in manual provisioning processes.[70] The breadth of these deficiencies is indicative of systemic problems which cannot be written off as aberrational. Nor can these occurrences be discounted as infrequent. Thus, for

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65 Id. at 54.

66 *See, e.g.,* Id. at Attachment A at A-56 - A-58.

67 *See, e.g.,* Id. at Attachment A at A-51 - A-52.

68 *See, e.g.,* Id. at Attachment A at A-44 - A-45.

69 *See, e.g.,* Id. at Attachment A at A-55.

70 *See, e.g.,* Id. at Attachment A at A-38 - A-40.

example, Telcordia relates that of the 152 LSRs and the 113 LSRs submitted, respectively, in the initial and retest of the UNE loop ordering process, 75 and 42, respectively, were "supplemental inputs to correct rejected inputs," and of the 437 LSRs and the 121 LSRs submitted, respectively, in the initial and retest of the UNE platform ordering process, 213 and 63, respectively, were "supplemental inputs to correct rejected inputs."[71]

Perhaps the most damning aspect of the Final Report is Telcordia's finding that eleven percent of competitive LECs' UNE platform customers lost dial tone during service cut-over.[72] Apart from drawing into question Telcordia's contention that "there will be no remaining service affecting issues" if its suggested "seven next steps" are taken,[73] this appalling high figure distinguishes Southwestern Bell's performance in Texas from Bell Atlantic's showing in New York. In New York, the Commission determined that competitive LECs experienced "extremely low rates of installation troubles . . . [*i.e.,*] less than two percent of the lines provisioned through hot cut loops."[74] "[T]he evidence in the record regarding hot cut installation quality, as well as service outages and disruptions," led the Commission to conclude "that Bell Atlantic provisions hot cuts to

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71 Id. at 12. While Telcordia opines that the large majority of the rejects resulted from competitive LEC errors, a high level of competitive of the 152 LSRs and the 437 LSRs submitted, respectively, in the initial and retest of the UNE loop ordering process 75 and 213, respectively, were "supplemental inputs to correct rejected inputs, LEC errors generally evidences an improperly designed and administered system.

72 Id. at Attachment E at E20-1.

73 Id. at ES-1.

74 Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), CC Docket No. 99-295, FCC 99-404 at ¶ 299.

competitors in a manner sufficient to meet the requirements of the checklist."[75] The disruption rate experienced on lines provisioned by Southwestern Bell through hot cuts was roughly twenty times that experienced on lines provisioned in this manner by Bell Atlantic, and more than five times the ceiling established by the New York Public Service Commission.[76]

Unlike Bell Atlantic, Southwestern Bell does not "provision[] hot cuts to competitors in a manner sufficient to meet the requirements of the checklist."[77] Loss of dial tone is the most deadly sin a competitive local provider can commit when dealing with a new customer. A customer whose first experience with a competitive provider is the loss of local service will not be a customer of that carrier for long. A service outage rate in excess of ten percent, accordingly, stands as a huge impediment to competitive viability. This Telcordia finding alone requires rejection of Southwestern Bell's Application.

Also consequential, however, are doubts raised by the Telcordia Final Report regarding the capacity of Southwestern Bell's OSS systems. Thus, for example, Telcordia reports business day Central Processor Unit ("CPU") utilization rates as high as 87.7 percent, which when

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75 Id. at ¶ 299.

76 The New York Public Service Commission had adopted a "two percent standard for hot cut installation troubles." Id. at ¶ 300. In September, Bell Atlantic reported that ".51 percent of lines provisioned . . . through hot cuts received trouble reports within seven days of the cutover." Id. at ¶ 300, fn. 596.

77 Id. at ¶ 299. Telcordia's evaluation of this problem is limited to its twin assessments that "issues that were discovered also occur for retail customers, *e.g.*, mislabeled circuits at demarcations," and that "[a]ny deficiencies in coordination hot cutovers can be addressed in documentation clarifications and increased training for CLEC staff." Unstated is how competitive LEC training will address "mislabeled circuits" resulting from "delays caused by heavy Central Office (CO) workloads." Telcordia Final Report at 23.

stressed by a capacity test load of slightly more than 10,000 LSRs rose to 99.3 percent.[78] In commenting upon these values, Telcordia expressed "concern[] with the high average utilization (over all applications of the MVS computer) for several hours," noting that "continued high utilization (at load levels beyond those in the Capacity Test) could eventually degrade (lengthen) response times."[79] This concern, Telcordia continued, also applied "to the forecast load level and mix."[80]

Finally, the Telcordia Final Report provides glimpses of the unacceptable level of manual intervention within Southwestern Bell's OSS processes. Telcordia acknowledges that "[m]anual activities can impact all five OSS categories (i.e., pre-order, ordering, provisioning, M&R, and billing)."[81] And Telcordia concedes the adverse impacts of manual processing:

> When a CLEC receives a manual error return in response to an electronic order, the CLEC must have the information in the paper reject keyed into its systems, causing the potential for error and delay. This concern is greatest when a large number of manual rejects are received. The second impact, which is less direct, is that the risk of manual input generally increases the potential for errors to be made, thus, CLEC orders can be processed incorrectly.[82]

But while Telcordia recognizes the problems inherent in manual intervention, it fails to quantify (indeed to even attempt to quantify) the extent of the manual activities to which competitive LECs are subjected, only grudgingly conceding that "there are some differences between processing of

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78 Id. at 126 - 31.

79 Id. at 130.

80 Id. at 130 - 31.

81 Id. at 22.

82 Id.

LSRs and retail orders," while trumpeting its view that "[m]any of the manual activities used to process CLEC queries and orders also affect SWBT's retail operations."[83]

Certain data contained in the Telcordia Final Report, however, provide some insight in this regard. Telcordia's "evaluation of the Local Service Request (LSR) and Service Order Data provided by SWBT . . . using a total sample of 998 Service Order records in REPORT1 as of July 7, 1999 as the base for the analysis" revealed that at least 37.68 percent of Service Order Records were subjected to manual intervention.[84] Given that this percentage figure reflects but one of several reasons that an order may be processed manually, it is likely a highly conservative value. Manual activity occurs when electronically-submitted orders which can and should be processed electronically fall out to manual intervention, when orders which cannot be processed electronically are submitted as electronic orders, and when Southwestern Bell does not offer electronic processing. According to other data provided by Telcordia, Southwestern Bell ultimately processes more than forty percent of competitive LEC orders on a manual basis.[85]

While a high level of manual processing does not, in and of itself, doom a BOC application, it is "a potential indicator of a wide range of problems that underlie a determination of whether a BOC provides nondiscriminatory access to its OSS."[86] Thus, a low flow-through rate could evidence, among other things, "(1) the failure to provision orders in a timely manner, (2) the

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[83] Id.

[84] Id. at 92 - 93.

[85] Id. at 106.

[86] Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), CC Docket No. 99-295, FCC 99-404 at ¶ 162.

failure to provide competing carriers with complete, up-to-date, business rules and ordering codes, (3) the lack of integration between pre-ordering and ordering functions, and (4) the failure to provide order status notices electronically."[87] In this case, Southwestern Bell's low flow-through rates are "an indicator of . . . [its] [in]ability to process competing carriers' orders, at reasonably foreseeable commercial volumes, in a non-discriminatory manner."[88]

C. Southwestern Bell Failure To Make Retail xDSL-based Services Available For Resale At Wholesale Rates Conflicts With The Resale Component Of The Competitive Checklist

Southwestern Bell asserts that it fully satisfies the resale component of the competitive checklist because "[t]he telecommunications services that SWBT provides CLECs for resale are identical to the services SWBT furnishes its own retail customers."[89] Southwestern Bell does not, however, make retail xDSL-based advanced services available at wholesale rates to TRA's resale carrier members for resale, purportedly avoiding this obligation by providing these services exclusively through a wholly-owned subsidiary. While the Commission has admittedly sanctioned this action, it nonetheless constitutes a blatant violation of Section 251(c)(4) of the Communications

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87 Id. at ¶ 162.

88 Id.

89 Brief in Support at 120.

Act[90] which, until cured, stands as an insurmountable barrier to the lawful grant of Southwestern Bell's Application.[91]

The Commission recently concluded that the discounted resale obligation of Section 251(c)(4) extends to xDSL-based advanced services sold at retail by incumbent local exchange carriers ("LECs") to business and residential end users.[92] The Commission emphasized that this finding "reinforce[d] the resale requirement of the Act by ensuring that resellers are able to acquire advanced services sold by incumbent LECs to residential and business end-users at wholesale rates."[93] This action, the Commission further noted, was necessary to "ensur[e] that competitive carriers are able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs."[94]

By sanctioning the use by Southwestern Bell of a separate affiliate as the exclusive vehicle by which xDSL-based advanced services would be provided and by thereby relieving Southwestern Bell of its statutory resale obligations with respect to these services, the Commission has effectively negated the pro-competitive impact of its *Advanced Services Resale Order* within the

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90 47 U.S.C. 251(c)(4)

91 Ameritech Corporation, Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket No. 98-141, FCC 99-279, ¶¶ 450 - 76 (October 8, 1999), *appeal pending* Telecommunications Resellers Association v. FCC, Case No. 99-1441 (D.C.Cir. November 8, 1999).

92 Deployment of Wireline Services Offering Advanced Telecommunications Capability (Second Report and Order), CC Docket No. 98-147, FCC 99-330, ¶ 20 (November 9, 1999) ("Advanced Services Resale Order").

93 Id.

94 Id.

State of Texas. In the State of Texas, resale carriers will not be "able to acquire advanced services sold by incumbent LECs to residential and business end-users at wholesale rates."[95] And as a result, resale carriers in the State of Texas will not be "able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs."[96] In short, the Commission will take away from competitive carriers operating within the State of Texas a competitive right it recognized as being of critical importance a mere two months ago. As the Commission long ago held, anything that "prevent[s] a new entrant from offering services that consumers perceive to be equal in quality to the offerings of incumbent LECs" stands as a significant impediment to "[v]igorous competition."[97]

TRA submits, moreover, that allowing Southwestern Bell to avoid its Section 251(c)(4) resale obligations as they relate to xDSL-based advanced services simply by using a wholly owned and controlled affiliate as its exclusive vehicle for the provision of such services is not only bad public policy, but it is unlawful. As the Commission has recognized, it lacks the authority under either Section 10 of the Communications Act, or Section 706 of the Telecommunications Act,[98] to forbear from strictly applying the requirements of Section 251(c) until such time as that provision has been fully implemented. Thus, the Commission has declared that "section 10(d) expressly forbids the Commission from forbearing from the requirements of sections

[95] Id.

[96] Id.

[97] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499 at ¶ 16.

[98] 47 U.S.C. § 159; Pub. L. No. 104-104, 110 Stat. 56, § 706 (1996). Section 706 is reproduced in the notes under 47 U.S.C. § 157.

251(c) and 271 'until it determines that those requirements have been fully implemented'" and that "[t]here is no language in section 10 which carves out an exclusion from this prohibition for actions taken pursuant to section 706."[99] As the Commission has declared, Section 251(c) is one of two "cornerstones of the framework Congress established in the 1996 Act to open local markets to competition," and, accordingly, it was "Congress' intention that the Commission not forbear from section[] 251(c) . . . until . . . [that] section[] was fully implemented.[100]

It is well settled that the Commission "may not accomplish indirectly that which . . . it may not do directly."[101] An agency lacking statutory authority to take a particular action may not accomplish the same result indirectly.[102] And this doctrine is that much more compelling when an agency is expressly prohibited from reaching the end it seeks to achieve indirectly.[103]

Here, however, the Commission, without expressly forbearing from strict application of the discounted resale mandate of Section 251(c)(4) to Southwestern Bell's provision of xDSL-based advanced services would achieve that precise result by allowing Southwestern Bell to offer such services exclusively through a wholly owned and controlled affiliate against which the Commission would not enforce the requirements of Section 251(c)(4). In a rather transparent

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99 Deployment of Wireline Services Offering Advanced Telecommunications Capability (Memorandum Opinion and Order), 13 FCC Rcd. 24011, ¶¶ 69 - 79 (1998), *recon. pending, petition for review filed* U S WEST Communications, Inc. v. FCC, Case No. 98-1410 (D.C.Cir. April 5, 1999).

100 Deployment of Wireline Services Offering Advanced Telecommunications Capability (Second Report and Order), CC Docket No. 98-147, FCC 99-330 at ¶ 73, fn. 151.

101 Iowa Utilities Board v. FCC, 135 F.2d 535 (8th Cir. 1998).

102 T.I.M.E. Incorporated v. United States, 359 U.S. 464, 475 (1959).

103 Natural Resources Defense Council, Inc. v. EPA, 683 F.2d 752, 763 (3rd Cir. 1982); The Chesapeake and Ohio Railway Company v. ICC, 392 F.Supp. 358, 367 (EDVA 1975).

manner, the Commission would thus be accomplishing indirectly that which Congress expressly forbid it from doing. Drawing a sharp distinction between Southwestern Bell and a wholly owned and controlled affiliate for Section 251(c)(4) purposes is blatant enough. Allowing that wholly owned and controlled affiliate to be the exclusive provider of Southwestern Bell xDSL-based advanced services while simultaneously relieving it of the Section 251(c)(4) discounted resale obligation clearly crosses the line between the permissible and the unlawful.

Further undermining the lawfulness of the proposed Commission action is the Section 251(h) mandate that "successors or assigns" of incumbent LECs, as well as carriers that occupy a market position comparable to, and substantially replace within a market, incumbent LECs, must be treated as incumbent LECs for purposes of Section 251(c).[104] A wholly owned and controlled affiliate of an incumbent LEC which is the sole source of a service offering within the incumbent LEC's corporate family clearly satisfies the Section 251(h) standard. TRA is aware that the Commission reached a different conclusion in assessing the legality of the separate advanced services affiliates that the merged SBC Communications/Ameritech created as a condition of the Commission's approval of that merger, but respectfully disagrees with that assessment.[105] A strong case could be made that a wholly owned and controlled incumbent LEC affiliate which, among other

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[104]. 47 U.S.C. § 251(h)

[105] The Commission has at least recognized that "an entity may become an incumbent LEC by being a successor or assign of a LEC that, as of February 8, 1996, was providing local exchange service in a particular area and was a member of NECA, even if that entity was not itself providing local exchange service in a particular area or a member of NECA as of that date." Ameritech Corporation, Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24 25, 63, 90, 95, and 101 of the Commission's Rules, (Memorandum Opinion and Order), CC Docket No. 98-141, FCC 99-279 at ¶ 448.

things, would succeed to the incumbent LEC's advanced services customers, be allowed to utilize on an exclusive basis the incumbent LEC's name, logos and service marks, be free to jointly market its services with the incumbent LEC on an exclusive basis, be permitted to obtain personnel and equipment from the incumbent LEC on an exclusive basis, and be authorized to share office space with the incumbent LEC, should be classified as an incumbent LEC under Section 251(h). When such an entity becomes the sole source provider of a service offering within the incumbent LEC's corporate family, it clearly takes on the mantle of an incumbent.

In such a circumstance, a customer desirous of acquiring xDSL-based advanced services from the incumbent LEC would have no choice but to deal with the incumbent LEC's wholly owned and controlled advanced services affiliate. The incumbent LEC would have effectively assigned to its advanced services affiliate its right to provide xDSL-based advanced services and with respect to such services, the advanced services affiliate would occupy the position of the incumbent in the market, having replaced its parent as the incumbent provider of these services. Indeed, with respect to xDSL-based advanced services, the incumbent LEC would have exited the market.

With respect to resale competitors, the competitive impact will be the same whether the Commission directly forbears from enforcing the Section 251(c)(4) discounted resale mandate against Southwestern Bell or permits Southwestern Bell to avoid that obligation by offering xDSL-based advanced services exclusively through a wholly owned and controlled affiliate which the Commission relieves of any Section 251(c)(4) obligation. In both instances, resale competitors will not be "able to acquire advanced services sold by incumbent LECs to residential and business end-users at wholesale rates" or be "able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs."[106]

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to deny the Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long

[106] Deployment of Wireline Services Offering Advanced Telecommunications Capability (Second Report and Order), CC Docket No. 98-147, FCC 99-330 at ¶ 20.

Distance (collectively "Southwestern Bell") under Section 271(d) of the Communications Act for authority to provide interLATA service "originating" within the Southwestern Bell "in-region State" of Texas.

Respectfully submitted,

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